

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF DELAWARE**

MAGTEN ASSET MANAGEMENT CORP.  
and LAW DEBENTURE TRUST COMPANY OF NEW  
YORK,

Plaintiffs,

v.

NORTHWESTERN CORPORATION,

Defendant.

Civil Action No. 04-1494-JJF

PUBLIC VERSION

MAGTEN ASSET MANAGEMENT CORP.,

Plaintiff,

v.

MIKE J. HANSON and ERNIE J. KINDT,

Defendants.

Civil Action No. 05-499-JJF

PUBLIC VERSION

**SUPPLEMENTAL DECLARATION OF JOHN W. BREWER**

JOHN W. BREWER declares as follows:

1. I am a member of the bar of the United States District Court for the Southern District of New York, admitted pro hac vice to the Bar of this Court, and Special Counsel with the firm of Fried, Frank, Harris, Shriver & Jacobson LLP, counsel to Plaintiff Magten Asset Management Corporation ("Magten") in connection with the above captioned action. I submit this supplemental declaration (the "Supplemental Declaration") in further support of Plaintiffs' Emergency Motion Seeking Orders (A) Shortening the Briefing Schedule Under Local Rule 7.1.2 and Setting a Hearing Date Before the Special Master; (B) Determining Privilege Status of Documents Northwestern Seeks to Recall Under Claim of Inadvertent Production and Privilege; (C) Compelling the Production of Non-Privileged Documents; (D) Compelling the Production of Documents Produced in Illegible Form; (E) Extending the Period for Completing Depositions; and

(F) Assessing Fees and Costs Against NorthWestern. For ease of reference, the additional exhibits to this Supplemental Declaration have been numbered consecutively from my prior declaration in support of this Motion.

2. Attached hereto as Exhibit 27 is a true and correct copy of a Complaint filed on April 25, 2007 in the United States District Court for the District of South Dakota by the federal Securities and Exchange Commission against Merle D. Lewis.

3. Attached hereto as Exhibit 28 is a true and correct copy of a Complaint filed on April 25, 2007 in the United States District Court for the District of South Dakota by the federal Securities and Exchange Commission against Richard R. Hylland.

4. Attached hereto as Exhibit 29 is a true and correct copy of a Complaint filed on April 25, 2007 in the United States District Court for the District of South Dakota by the federal Securities and Exchange Commission against Kurt D. Whitesel.

5. Attached hereto as Exhibit 30 is a true and correct copy of a Complaint filed on April 25, 2007 in the United States District Court for the District of South Dakota by the federal Securities and Exchange Commission against Kipp D. Orme.

6. Attached hereto as Exhibit 31 is a true and correct copy of the Consent of Merle D. Lewis filed on April 25, 2007 in the United States District Court for the District of South Dakota.

7. Attached hereto as Exhibit 32 is a true and correct copy of the Consent of Richard R. Hylland filed on April 25, 2007 in the United States District Court for the District of South Dakota.

8. Attached hereto as Exhibit 33 is a true and correct copy of the Consent of Kurt D. Whitesel filed on April 25, 2007 in the United States District Court for the District of South Dakota.

9. Attached hereto as Exhibit 34 is a true and correct copy of the Consent of Kipp D. Orme filed on April 25, 2007 in the United States District Court for the District of South Dakota.

10. Attached hereto as Exhibit 35 is a true and correct copy of the Final Judgment as to Defendant Merle D. Lewis filed on April 25, 2007 in the United States District Court for the District of South Dakota.

11. Attached hereto as Exhibit 36 is a true and correct copy of the Final Judgment as to Defendant Richard R. Hylland filed on April 25, 2007 in the United States District Court for the District of South Dakota.

12. Attached hereto as Exhibit 37 is a true and correct copy of the Final Judgment as to Defendant Kurt D. Whitesel filed on April 25, 2007 in the United States District Court for the District of South Dakota.

13. Attached hereto as Exhibit 38 is a true and correct copy of the Final Judgment as to Defendant Kipp D. Orme filed on April 25, 2007 in the United States District Court for the District of South Dakota.

14. Attached hereto as Exhibit 39 is a true and correct copy of the pertinent pages of a transcript of the deposition of Gary Drook, taken on April 25, 2007.

15. Attached hereto as Exhibit 40 is a true and correct copy of a Westlaw printout of an article from the April 16, 2007 issue of the National Law Journal entitled "Judicial Conference Rejects Selective Waiver."

16. Attached hereto as Exhibit 41 is a true and correct copy of the most recent version of proposed Federal Rule of Evidence 502, following the April 2007 meeting of the Advisory Committee on Evidence Rules. This document was posted on or about April 16, 2007 on the "Complex Litigation Blog" (<http://www.josephnyc.com/blog/>) maintained by Gregory P. Joseph, a prominent lawyer who has served as a member of the Advisory Committee on Evidence Rules as well as Chair of the ABA's Litigation Section. Mr. Joseph has advised me in an email exchange that he obtained this document directly from the Reporter to the Committee.

17. Attached hereto as Exhibit 42 is a true and correct copy of potential statutory language on selective waiver prepared by the Advisory Committee on Evidence

Rules in connection with its April 2007 meeting. This document was posted on or about April 16, 2007 on the "Complex Litigation Blog" (<http://www.josephnyc.com/blog/>) maintained by Gregory P. Joseph, a prominent lawyer who has served as a member of the Advisory Committee on Evidence Rules as well as Chair of the ABA's Litigation Section. Mr. Joseph has advised me in an email exchange that he obtained this document directly from the Reporter to the Committee.

18. Attached hereto as Exhibit 43 is a true and correct copy of a chart prepared by persons working under my supervision assembling information about the documents subject to the return demands, including the date first produced, the date return was demanded, the apparently relevant privilege log number (although in some instances the Bates-number ranges did not match perfectly and in a few instances the Bates range in the demand letter could not be correlated with the log), the date logged, whether the document was admitted to have been given to the SEC in NorthWestern's April 9 letter (Exhibit 16 to my prior declaration), and whether the document is otherwise subject to a demand for production because not privileged on the face of the log (as listed on the attachments to the April 5 and 10 letters which are Exhibits 19 and 20 to my prior declaration).

19. Attached hereto as Exhibit 44 is a true and correct copy of the pertinent pages of a transcript of the deposition of Rick Fresia, taken on April 30, 2007.

20. Attached hereto as Exhibit 45 is a true and correct copy of documents Bates-numbered NOR459163-NOR459164 produced by NorthWestern.

21. Attached hereto as Exhibit 46 is a true and correct copy of the lists of apparently non-privileged documents attached to Exhibits 19 and 20 from my prior declaration marked to show which of them were also disclosed to the SEC as admitted by NorthWestern in the letter attached as Exhibit 16 to my prior declaration.

I declare under the penalty of perjury under the laws of the United  
States that the above statements are true and correct.

Dated: New York, New York  
May 2, 2007

By:   
John W. Brewer

585007

**CERTIFICATE OF SERVICE**

I hereby certify that on this 9<sup>th</sup> day of May, 2007, I served by hand delivery and electronic filing the Public Version of the SUPPLEMENTAL DECLARATION OF JOHN W. BREWER, using CM/ECF which will send notification of such filing(s) to the following:


Denise Seastone Kraft, Esquire  
Edwards Angell Palmer & Dodge LLP  
919 North Market Street, 15th Floor  
Wilmington, DE 19801

Victoria Watson Counihan, Esquire  
Dennis A. Meloro, Esquire  
Greenberg Traurig LLP  
The Nemours Building  
1007 North Orange Street, Suite 1200  
Wilmington, DE 19801

I also certify that, on this 9<sup>th</sup> day of May, 2007, I served the aforementioned document, by e-mail and Federal Express, upon the following participants:

Stanley T. Kaleczyc, Esquire  
Kimberly A. Beatty, Esquire  
Browning, Kaleczyc, Berry & Hoven, P.C.  
139 North Last Chance Gulch  
P.O. Box 1697  
Helena, Mt 59624

Steven J. Reisman, Esquire  
Joseph D. Pizzurro, Esquire  
Nancy E. Delaney, Esquire  
Miriam K. Harwood, Esquire  
Curtis, Mallet-Prevost, Colt & Mosle LLP  
101 Park Avenue  
New York, New York 10178-0061

  
Dale R. Dubé (No. 2863)